

JAN 17 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID WAYNE BLANTON,

Defendant - Appellant.

No. 04-30264

D.C. No. CR-03-30062-ALA

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

David Wayne Blanton appeals from the 84-month sentence imposed following his guilty plea conviction for being a felon in possession of a firearm and

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

ammunition, in violation of 18 U.S.C. § 922(g)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291.

Because Blanton was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 915-16 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error).

REMANDED.